

EXHIBIT D

Subject: Privilege MTC and letter chart.docx

Kate:

Thank you for calling me this morning to discuss your concern that the categories/legal issues we identified in our letter were not addressed in Plaintiffs' brief. First, as we discussed, the motion was not approached as a brief on categories, but rather a brief addressing 133 individual challenged privilege log entries. Judge Campbell requested, however, that we in effect distill our motion down to categories/legal issues that we were arguing could be determined to not be protected by privilege and/or work product and to provide 3 examples of each. I believe that our letter has done exactly this, but I am hopeful that our discussion this morning was able to further clarify any confusion on your part. At your request, I have further provided a chart listing our statement of categories/legal issues and citing areas of our brief wherein these issues were addressed. To the extent, that you still believe these issues were not addressed in the brief and/or believe you do not adequately understand our reasoning as to why these categories should be utilized, please let me know. I am more than happy to further clarify our positions if you think necessary.

Paragraph in the April 4 letter	Section in Motion In Which Issue Was Addressed
1.a	IV.B.1
1.b.	IV.B.1, IV.B.3.d
2	IV.B.2
3	IV.B.3.a, IV.C (this category is provided as a simplification of the "primary purpose" test for attorney-client privilege and the "because of" test under the work product standard. In essence, if there was a general business purpose for the communication and it would have been created in substantially similar form, neither test will be met.)
4	IV.B.3.b
5	IV.B.3.c
6	IV.B.3.c
7	IV.B.1, IV.C (this category stands for simple proposition that a party cannot establish privilege or work product if they do not establish who authored or received the communications. This problem was discussed in regards to numerous individual entries on the spreadsheet).
8	IV.B.3.e, IV.C

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From: Kate Helm [mailto:Kate.Helm@nelsonmullins.com]
Sent: Tuesday, April 05, 2016 10:37 AM
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Subject: Privilege MTC and letter chart.docx

Troy – based on our telephone conversation, I created the attached chart. Please let me know if it accurately reflects our discussion. Thank you.

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